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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA
and CALIFORNIA DEPARTMENT
OF TOXIC SUBSTANCES
CONTROL,

Plaintiffs,

v.

LEACH INTERNATIONAL
CORPORATION,

Defendant.

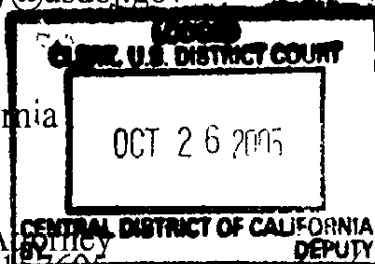
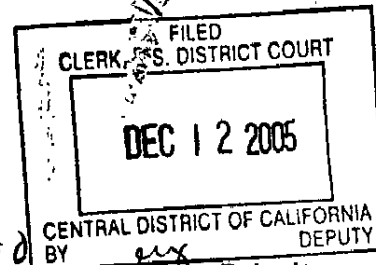
Case No. CV05-7515 CAS (Ex)

CONSENT DECREE

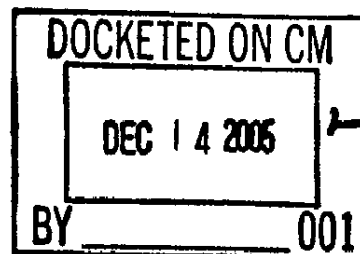
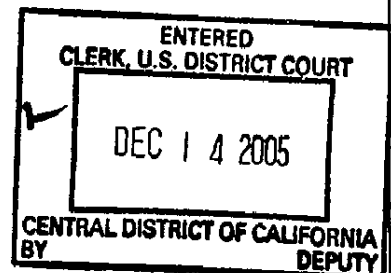
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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA"),
4 and the California Department of Toxic Substances Control ("DTSC") filed a joint
5 complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive
6 Environmental Response, Compensation, and Liability Act ("CERCLA"), 42
7 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation and
8 Recovery Act ("RCRA"), 42 U.S.C. § 6973, against Leach International
9 Corporation ("Settling Defendant").

10 B. The United States and DTSC in their complaint seek, inter alia:
11 (1) reimbursement of costs incurred by EPA, the United States Department of
12 Justice, and DTSC for response actions at the Baldwin Park Operable Unit (Area
13 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County,
14 California (the "BPOU Area"), together with accrued interest; and (2) performance
15 of studies and response work by Settling Defendant at the BPOU Area consistent
16 with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

17 C. Settling Defendant and Leach Holding Corporation ("Leach Holding")
18 that have entered into this Consent Decree do not admit, and specifically deny:
19 (i) any liability to the Plaintiffs arising out of the transactions or occurrences
20 alleged in the complaint; and (ii) that the release or threatened release of
21 hazardous substance(s) at or from the BPOU Area constitutes an imminent or
22 substantial endangerment to the public health or welfare or the environment.

23 D. The work required to implement the Record of Decision ("ROD") for
24 the BPOU Area, as supplemented by the Explanation of Significant Differences
25 ("ESD"), is being performed by other parties pursuant to EPA's June 30, 2000
26 Unilateral Administrative Order No. 2000-13 (as amended) issued under Section
27 106 of CERCLA, 42 U.S.C. § 9606, and Section 7003 of RCRA, 42 U.S.C. § 6973
28 ("EPA's Order"), relating to the BPOU Area.

1 E. The United States, DTSC, and Settling Defendant agree, and the Court
2 by entering this Consent Decree finds, that this Consent Decree has been
3 negotiated by the Parties in good faith, that settlement of this matter will avoid
4 prolonged and complicated litigation between the Parties, and that this Consent
5 Decree is fair, reasonable, and in the public interest.

6 NOW, THEREFORE, with the consent of the Parties to this Decree, it
7 is hereby ORDERED, ADJUDGED, AND DECREED:

8 II. JURISDICTION

9 1. This Court has jurisdiction over the subject matter of this action
10 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607,
11 and 9613(b). This Court also has personal jurisdiction over the Settling
12 Defendant. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and
13 28 U.S.C. § 1391(b) and (c). Settling Defendant consents to and shall not
14 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
15 enforce this Consent Decree.

16 III. PARTIES BOUND

17 2. This Consent Decree applies to and is binding upon the following
18 parties: the United States; DTSC; and Settling Defendant and its respective
19 successors and assigns. Any change in ownership or corporate status of Settling
20 Defendant including, but not limited to, any transfer of assets or real or personal
21 property, shall in no way alter Settling Defendant's responsibilities under this
22 Consent Decree.

23 IV. DEFINITIONS

24 3. Unless otherwise expressly provided herein, terms used in this
25 Consent Decree that are defined in CERCLA, RCRA, or in regulations
26 promulgated under CERCLA or RCRA shall have the meaning assigned to them in
27 CERCLA or RCRA or in such regulations. Whenever terms listed below are used
28 in this Consent Decree or in the appendices attached hereto and incorporated

1 hereunder, the following definitions shall apply:

2 "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2) of the
3 San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa,
4 Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted
5 generally on the map attached as Appendix A.

6 "CERCLA" shall mean the Comprehensive Environmental Response,
7 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

8 "Certification of Completion" shall mean EPA's written determination that
9 the Remedial Action has been performed and that the performance standards have
10 been achieved.

11 "Consent Decree" or "Decree" shall mean this Decree and all appendices
12 attached hereto (listed in Section XIX). In the event of conflict between this
13 Decree and any appendix, this Decree shall control.

14 "Day" shall mean a calendar day unless expressly stated to be a working
15 day. "Working day" shall mean a day other than a Saturday, Sunday, or federal
16 holiday. In computing any period of time under this Consent Decree, where the
17 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run
18 until the close of business of the next working day.

19 "DOJ" shall mean the United States Department of Justice and any
20 successor departments, agencies, or instrumentalities of the United States.

21 "DTSC" shall mean the California Department of Toxic Substances Control
22 and any predecessor or successor departments or agencies of DTSC.

23 "DTSC Response Costs" shall mean: (i) all costs, including, but not limited
24 to, direct and indirect costs that DTSC has incurred at or in connection with the
25 BPOU Area prior to the entry of this Consent Decree, and (ii) all future costs
26 (including, but not limited to, direct and indirect costs) related to the
27 implementation or oversight of the Work, that DTSC will incur at or in connection
28 with the BPOU Area.

1 "EPA" shall mean the United States Environmental Protection Agency and
2 any successor departments, agencies, or instrumentalities of the United States.

3 "EPA Hazardous Substance Superfund" shall mean the Hazardous
4 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

5 "Explanation of Significant Differences" or "ESD" shall mean the
6 Explanation of Significant Differences relating to the BPOU Area issued by EPA
7 in May 1999. The ESD is attached as Appendix C.

8 "Interest" shall mean interest at the rate specified for interest on investments
9 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
10 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
11 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the
12 interest accrues. The rate of interest is subject to change on October 1 of each
13 year.

14 "Leach Holding" shall mean Leach Holding Corporation, a Delaware
15 corporation that is the parent corporation of Leach International Corporation.

16 "Paragraph" shall mean a portion of this Consent Decree identified by an
17 Arabic numeral or an upper case letter.

18 "Parties" shall mean the United States, DTSC, and Settling Defendant.

19 "Plaintiffs" shall mean the United States and DTSC.

20 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
21 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

22 "ROD" shall mean the EPA Record of Decision and all attachments thereto
23 relating to the interim remedy for the BPOU Area, which was signed by the
24 delegate of the Regional Administrator, EPA Region 9, on March 31, 1994. The
25 ROD is attached as Appendix B.

26 "Remedial Action" shall mean those activities, except for Operation and
27 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

28 "Response Costs" shall mean: (i) all past costs, including, but not limited

1 to, direct and indirect costs, that the United States has incurred at or in connection
2 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future
3 costs (including, but not limited to, direct and indirect costs) related to the
4 implementation or oversight of the Work, that the United States will incur at or in
5 connection with the BPOU Area.

6 "Section" shall mean a portion of this Consent Decree identified by a
7 Roman numeral.

8 "Settling Defendant" shall mean Leach International Corporation.

9 "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los
10 Angeles County, California.

11 "United States" shall mean the United States of America, including its
12 departments, agencies, and instrumentalities.

13 "Work" shall mean all activities required to be performed to implement the
14 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,
15 as supplemented by the ESD, at or in connection with the BPOU Area.

16 V. STATEMENT OF PURPOSE

17 4. By entering into this Consent Decree, the mutual objectives of the
18 Parties, as more precisely described in the terms of this Consent Decree, are:

19 a. To reach a settlement among the Parties with respect to the BPOU Area
20 that allows Settling Defendant to make a cash payment to resolve any claims for
21 civil or administrative liability under Sections 106 and 107 of CERCLA, 42
22 U.S.C. §§ 9607, 9607, and RCRA Section 7003, 42 U.S.C. § 6973, for interim
23 response actions and for response costs related to interim response actions
24 incurred and to be incurred at or in connection with the BPOU Area, as provided
25 in Section VIII (Covenants Not to Sue by Plaintiffs) and Section IX (Plaintiffs'
26 Reservation of Rights) of this Decree;

27 b. To resolve any claims of Settling Defendant and Leach Holding that
28 could have been asserted against the United States and DTSC with regard to the

1 BPOU Area as provided in Section X (Covenants Not to Sue by Settling
2 Defendant and Leach Holding) of this Decree;

3 c. To simplify the remaining administrative and judicial enforcement
4 activities concerning the BPOU Area by resolving the United States' and DTSC's
5 claims against Settling Defendant and Leach Holding for interim response actions
6 and for response costs related to interim response actions incurred and to be
7 incurred at or in connection with the BPOU Area, as provided in Section VIII
8 (Covenants Not to Sue by Plaintiffs) and Section IX (Plaintiffs' Reservation of
9 Rights) of this Decree; and

10 d. To provide for contribution protection for Settling Defendant and Leach
11 Holding with respect to matters addressed in this Consent Decree pursuant to
12 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

13 VI. PAYMENTS BY SETTLING DEFENDANT

14 5. Within 30 days of the effective date of this Consent Decree, Settling
15 Defendant shall pay to EPA \$975,000 in the manner described in this Section.

16 6. Payment shall be made by FedWire Electronic Funds Transfer
17 ("EFT") to the U.S. Department of Justice account in accordance with current EFT
18 procedures, referencing the EPA Region and Site Spill Number 0927, and DOJ
19 Case Number 90-11-2-354/14. Payment shall be made in accordance with
20 instructions provided to Settling Defendant by the Financial Litigation Unit of the
21 U.S. Attorney's Office in the Central District of California following lodging of
22 the Consent Decree.

23 7. At the time of payment, Settling Defendant shall send a letter
24 confirming the date and reference number of its FedWire EFT to the United States,
25 EPA, and the Regional Financial Management Officer as provided in Section XVI
26 (Notices and Submissions) of this Decree.

27 8. The total amount to be paid pursuant to Paragraph 5 of this Consent
28 Decree shall be deposited in the Site 0927 San Gabriel Valley/Baldwin Park

1 Special Account within the EPA Hazardous Substance Superfund to be retained,
2 and used to conduct or finance response actions at or in connection with the
3 BPOU Area, or to be transferred by EPA to the EPA Hazardous Substance
4 Superfund.

5 9. Within 30 days of the effective date of this Consent Decree, Settling
6 Defendant shall pay to DTSC \$44,940 in the form of a certified check or checks
7 made payable to Cashier, California Department of Toxic Substances Control, and
8 bearing on its face the docket number of this proceeding.

9 10. Settling Defendant shall send its certified check or checks, along with
10 a transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel
11 Valley Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

12 Department of Toxic Substances Control
13 Accounting/Cashier
1001 I Street, 4th Floor
14 P.O. Box 806
Sacramento, CA 95812-0806

15 11. Settling Defendant's payment to EPA and DTSC includes an amount
16 for: (i) the Work; (ii) Response Costs and DTSC Response Costs incurred or to be
17 incurred at or in connection with the BPOU Area; and (iii) a premium to cover the
18 risks and uncertainties associated with this settlement, including, but not limited
19 to, the risk that the total cost of the Work, Response Costs, and DTSC Response
20 Costs incurred or to be incurred at or in connection with the BPOU Area will
21 exceed the estimated total cost of the Work, Response Costs, and DTSC Response
22 Costs upon which Settling Defendant's payments are based.

23 **VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS**

24 12. Interest on Late Payments. If Settling Defendant fails to make any
25 payment under Paragraphs 5 or 9 within 30 days of the effective date of this
26 Consent Decree, then Settling Defendant shall pay Interest on the unpaid balance,
27 commencing on the date that payment is due and accruing through the date of
28 payment. Settling Defendant shall make all payments required by this Paragraph

in the manner described in Paragraphs 6, 7, and 10 unless otherwise directed in writing by EPA or DTSC.

13. Stipulated Penalty.

a. In addition to the Interest required by Paragraph 12 (Interest on Late Payments), if Settling Defendant fails to remit the payments to the United States required by Paragraph 5 when due, then Settling Defendant also shall pay stipulated penalties to the United States of \$2,500 per day for each day that its payment is late.

b. Stipulated penalties are due and payable to the United States within 30 days of the date of the demand for payment of the penalties by the United States. All payments to the United States under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, EPA Region and Site Spill Number 0927, and DOJ Case Number 90-11-2-354/14, and shall be sent to: EPA - Cincinnati Accounting Operations, Attn: Region 9 Receivables, P.O. Box 371099M, Pittsburgh, PA 15251.

c. In addition to the Interest required by Paragraph 12 (Interest on Late Payments), if Settling Defendant fails to remit the payment to DTSC required by Paragraph 9 when due, then Settling Defendant also shall pay stipulated penalties to DTSC of \$500 per day for each day that the payment is late.

d. Stipulated penalties are due and payable to DTSC within 30 days of the date of the demand for payment of the penalties by DTSC. All payments to DTSC under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "Cashier, California Department of Toxic Substances Control." The check, or a letter accompanying the check, shall reference the name and address of the party making payment and the Site name,

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1 and shall be sent to:

2 Department of Toxic Substances Control
3 Accounting/Cashier
4 1001 I Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

5 e. At the time of payment of any stipulated penalties to the United States,
6 Settling Defendant shall send copies of check(s), and any accompanying
7 transmittal letter(s), to the United States, EPA, and the Regional Financial
8 Management Officer as provided in Section XVI (Notices and Submissions) of
9 this Consent Decree. At the time of payment of any stipulated penalties to DTSC,
10 Settling Defendant shall send copies of check(s), and any accompanying
11 transmittal letter(s) to DTSC as provided in Section XVI (Notices and
12 Submissions).

13 f. Penalties shall accrue as provided in this Paragraph regardless of whether
14 EPA or DTSC has notified Settling Defendant of the violation or made a demand
15 for payment, but need only be paid upon demand. All penalties shall begin to
16 accrue on the day after payment is due and shall continue to accrue through the
17 date of payment. Nothing herein shall prevent the simultaneous accrual of
18 separate penalties for separate violations of this Consent Decree.

19 14. If the United States or DTSC brings an action to enforce this Consent
20 Decree, Settling Defendant shall reimburse the Plaintiff(s) bringing the action for
21 all costs of such action, including, but not limited to, costs of attorney time.

22 15. Payments made under this Section shall be in addition to any other
23 remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's
24 failure to comply with the requirements of this Consent Decree.

25 16. Notwithstanding any other provision of this Section, the United States
26 may, in its unreviewable discretion, waive payment of any portion of the stipulated
27 penalties that have accrued to the United States pursuant to this Consent Decree.
28 Notwithstanding any other provision of this Section, DTSC may, in its

unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued to DTSC pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from its payment obligation as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

17. In consideration of the payment that will be made by Settling Defendant under the terms of this Consent Decree, and except as otherwise specifically provided in Section IX (Plaintiffs' Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant and Leach Holding pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for performance of the Work and for recovery of Response Costs. In consideration of the payment that will be made by Settling Defendant under the terms of this Consent Decree, and except as otherwise specifically provided in Section IX (Plaintiffs' Reservation of Rights), DTSC covenants not to sue or to take administrative action against Settling Defendant and Leach Holding pursuant to Section 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for performance of the Work and for recovery of DTSC Response Costs. These covenants not to sue shall take effect upon the receipt by EPA and DTSC of all payments required by Section VI (Payments by Settling Defendant) and any amount due under Section VII (Failure to Comply with Consent Decree Requirements). These covenants not to sue accorded to Settling Defendant and Leach Holding are conditioned upon satisfactory performance by Settling Defendant and Leach Holding of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and Leach Holding and do not extend to any other person.

IX. PLAINTIFFS' RESERVATION OF RIGHTS

1 18. Pre-certification Reservations. The United States reserves, and this
2 Consent Decree is without prejudice to, the right to institute proceedings in this
3 action or in a new action, or to issue an administrative order seeking to compel
4 Settling Defendant and/or Leach Holding: (1) to perform response actions relating
5 to the BPOU Area or (2) to reimburse the United States for additional costs of
6 response if, prior to Certification of Completion of the Remedial Action:

7 (i) conditions at the BPOU Area, previously unknown to EPA, are
8 discovered, or

9 (ii) information, previously unknown to EPA, is received, in whole or in
10 part,

11 and EPA determines that these previously unknown conditions or information
12 together with any other relevant information indicates that the Remedial Action is
13 not protective of human health or the environment. If EPA makes such a
14 determination, DTSC reserves, and this Consent Decree is without prejudice to,
15 the right to institute proceedings in this action or in a new action, or to issue an
16 administrative order seeking to compel Settling Defendant and/or Leach Holding
17 to reimburse DTSC for additional costs of response.

18 19. Post-certification Reservations. The United States reserves, and this
19 Consent Decree is without prejudice to, the right to institute proceedings in this
20 action or in a new action, or to issue an administrative order seeking to compel
21 Settling Defendant and/or Leach Holding: (1) to perform response actions relating
22 to the BPOU Area or (2) to reimburse the United States for additional costs of
23 response if, subsequent to Certification of Completion of the Remedial Action:

24 (i) conditions at the BPOU Area, previously unknown to EPA, are
25 discovered, or

26 (ii) information, previously unknown to EPA, is received, in whole or in
27 part,

28 and EPA determines that these previously unknown conditions or this information

1 together with other relevant information indicate that the Remedial Action is not
2 protective of human health or the environment. If EPA makes such a
3 determination, DTSC reserves, and this Consent Decree is without prejudice to,
4 the right to institute proceedings in this action or in a new action, or to issue an
5 administrative order seeking to compel Settling Defendant and/or Leach Holding
6 to reimburse DTSC for additional costs of response.

7 20. For purposes of Paragraph 18, the information and the conditions
8 known to EPA shall include only that information and those conditions known to
9 EPA as of May 31, 1999, the date of the ESD supplementing the ROD, and set
10 forth in the ROD, the ESD, and the administrative record supporting the ROD and
11 the ESD. For purposes of Paragraph 19, the information and the conditions known
12 to EPA shall include only that information and those conditions known to EPA as
13 of the date of Certification of Completion of the Remedial Action, and set forth in
14 the ROD, the ESD, the administrative record supporting the ROD and the ESD,
15 and the post-ROD administrative record.

16 21. General Reservation of Rights. The covenants not to sue set forth in
17 Paragraph 17 do not pertain to any matters other than those expressly specified
18 therein. The United States and DTSC reserve, and this Consent Decree is without
19 prejudice to, all rights of the United States and DTSC against Settling Defendant
20 and Leach Holding with respect to all other matters including, but not limited to,
21 the following:

22 (1) claims based on a failure by Settling Defendant and/or Leach Holding
23 to meet a requirement of this Consent Decree;

24 (2) liability arising from the past, present, or future disposal, release, or
25 threat of release of hazardous substances, pollutants, contaminants, or solid wastes
26 outside of the BPOU Area;

27 (3) liability based upon Settling Defendant's and/or Leach Holding's
28 transportation, treatment, storage, or disposal, or the arrangement for the

1 transportation, treatment, storage, or disposal of hazardous substances, pollutants,
2 contaminants, or solid wastes at or in connection with the BPOU Area after
3 signature of this Consent Decree by the Settling Defendant and Leach Holding;

4 (4) liability for damages for injury to, destruction of, or loss of natural
5 resources, and for the costs of any natural resource damage assessments;

6 (5) criminal liability;

7 (6) liability for response costs and response actions at additional operable
8 units at the Site, or a final response action, including, but not limited to, the final
9 Record of Decision for the BPOU Area;

10 (7) liability for injunctive relief or administrative order enforcement under
11 Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not
12 within the BPOU Area; and

13 (8) liability for costs incurred or to be incurred that are not within the
14 definition of Response Costs or DTSC Response Costs.

15 22. Notwithstanding any other provision of this Consent Decree, the
16 United States and DTSC reserve, and this Consent Decree is without prejudice to,
17 the right to reinstitute or reopen this action, or commence a new action seeking
18 relief other than as provided in this Consent Decree, if the certification made by
19 Leach Holding in Paragraph 42 is false or, in any material respect, inaccurate.

20 23. Notwithstanding any other provision of this Consent Decree, the
21 United States and DTSC retain all authority and reserve all rights to take any and
22 all response actions authorized by law.

23 X. COVENANTS NOT TO SUE BY SETTLING DEFENDANT
24 AND LEACH HOLDING

25 24. Subject to the reservation in Paragraph 24(f), Settling Defendant and
26 Leach Holding hereby covenant not to sue and agree not to assert any claims or
27 causes of action against the United States or DTSC, or their contractors or
28 employees, with respect to the BPOU Area or this Consent Decree, including, but

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1 not limited to:

2 a. any direct or indirect claim for reimbursement from the Hazardous
3 Substance Superfund (established pursuant to the Internal Revenue Code, 26
4 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42
5 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

6 b. any claims arising out of response actions at or in connection with the
7 BPOU Area, including any claims under the United States Constitution, the
8 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to
9 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

10 c. any claims against the United States, including any department, agency,
11 or instrumentality of the United States, under CERCLA Sections 107 or 113
12 related to the BPOU Area;

13 d. any claims against the State of California, including any department,
14 agency, or instrumentality of the State of California, under CERCLA Sections 107
15 or 113 related to the BPOU Area; or

16 e. any claims against the United States or DTSC arising out of response
17 activities at the BPOU Area, including claims based on EPA's and DTSC's
18 selection of response actions, oversight of response activities or approval of plans
19 for such activities.

20 f. Settling Defendant and Leach Holding reserve, and this Consent Decree
21 is without prejudice to, claims against the United States under federal law for costs
22 incurred at the BPOU Area based upon any contract with the United States
23 regarding activities at Settling Defendant's facility at 717 North Coney Avenue in
24 Azusa, California (the "Facility").

25 25. Except as provided in Paragraph 27 (Waiver of Claims) and
26 Paragraph 33 (Waiver of Claim-Splitting Defenses), these covenants not to sue
27 shall not apply to Settling Defendant and Leach Holding in the event the United
28 States or DTSC brings a cause of action or issues an order against Settling

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1 Defendant and Leach Holding pursuant to the reservations set forth in Paragraph
2 21, but only to the extent that Settling Defendant's or Leach Holding's claims
3 arise from the same response action or response costs that the United States or
4 DTSC is seeking against the Settling Defendant and Leach Holding pursuant to
5 the applicable reservation.

6 26. Nothing in this Consent Decree shall be deemed to constitute
7 approval or preauthorization of a claim within the meaning of Section 111 of
8 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

9 27. Settling Defendant and Leach Holding hereby agree not to assert any
10 CERCLA claims or causes of action that they may have for all matters relating to
11 the BPOU Area, including for contribution, against any person other than Settling
12 Defendant's and Leach Holding's respective insurance carriers and potentially
13 responsible parties who have received in the past or receive in the future special
14 notice from EPA in connection with the BPOU Area and who are not signatories
15 to this Consent Decree or another Consent Decree in connection with the BPOU
16 Area, for damages or costs of any kind relating to response actions and costs
17 incurred at the BPOU Area, including without limitation, claims under Sections
18 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, common law claims of
19 negligence, contribution, equitable indemnity and restitution, and claims under
20 any other federal, state or local statutory or common law. This waiver shall not
21 apply with respect to any defense, claim, or cause of action that Settling Defendant
22 or Leach Holding may have against any person if such person asserts a claim or
23 cause of action relating to the BPOU Area against Settling Defendant or Leach
24 Holding.

25 XI. SETTLING DEFENDANT'S AND LEACH HOLDING'S
26 RESERVATION OF RIGHTS

27 28. With the exception of the defenses or claims covered by Paragraph 33
28 below (Waiver of Claim-Splitting Defenses), Settling Defendant and Leach

1 Holding reserve their rights to raise any and all defenses to liability in any future
2 proceeding brought by the United States or DTSC pursuant to the reservations set
3 forth in Paragraph 21 to the extent that Settling Defendant's and Leach Holding's
4 claims arise from the same response action or response costs that the United States
5 or DTSC is seeking against the Settling Defendant or Leach Holding pursuant to
6 the applicable reservation. Nothing in this Consent Decree shall be construed as
7 an admission of liability.

8 **XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

9 29. Except as expressly provided in Paragraph 27, nothing in this
10 Consent Decree shall be construed to create any rights in, or grant any cause of
11 action to, any person not a Party to this Consent Decree. The preceding sentence
12 shall not be construed to waive or nullify any rights that any person not a signatory
13 to this Decree may have under applicable law. Except as provided in Paragraph
14 27, each of the Parties expressly reserves any and all rights (including, but not
15 limited to, any right to contribution), defenses, claims, demands, and causes of
16 action which each Party may have with respect to any matter, transaction, or
17 occurrence relating in any way to the Site against any person not a Party hereto.

18 30. The Parties agree, and by entering this Consent Decree this Court
19 finds, that Settling Defendant and Leach Holding are entitled, as of the effective
20 date of this Consent Decree, to protection from contribution actions or claims as
21 provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters
22 addressed" in this Consent Decree. For purposes of this Paragraph, "matters
23 addressed" shall mean (a) the Work, (b) all response costs incurred prior to the
24 entry of this Consent Decree by the United States, DTSC, or any other person at or
25 in connection with the BPOU Area, and (c) all response costs related to the
26 implementation or oversight of the Work to be incurred after the entry of this
27 Consent Decree by the United States, DTSC, or any other person at or in
28 connection with the BPOU Area. The "matters addressed" in this Consent Decree

1 do not include those response costs or response actions as to which the United
2 States or DTSC has reserved its rights under this Consent Decree (except for
3 claims for failure to comply with this Decree), in the event that the United States
4 or DTSC asserts rights against Settling Defendant and/or Leach Holding coming
5 within the scope of such reservations.

6 31. Settling Defendant and Leach Holding agree that with respect to any
7 suit or claim for contribution brought by them for matters related to this Consent
8 Decree, they will notify the United States and DTSC in writing no later than 60
9 days prior to the initiation of such suit or claim.

10 32. Settling Defendant and Leach Holding also agree that with respect to
11 any suit or claim for contribution brought against them for matters related to this
12 Consent Decree, they will notify in writing the United States and DTSC within 10
13 days of service of the complaint on them. In addition, with respect to any such
14 suit or claim, Settling Defendant and Leach Holding shall notify the United States
15 and DTSC within 10 days of service on them or receipt by them of any Motion for
16 Summary Judgment and within 10 days of receipt by them of any order from a
17 court setting a case for trial.

18 33. In any subsequent administrative or judicial proceeding initiated by
19 the United States or DTSC for injunctive relief, recovery of response costs, or
20 other relief relating to the Site, Settling Defendant and Leach Holding shall not
21 assert, and may not maintain, any defense or claim based upon the principles of
22 waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
23 defenses based upon any contention that the claims raised by the United States or
24 DTSC in the subsequent proceeding were or should have been brought in the
25 instant case; provided, however, that nothing in this Paragraph affects the
26 enforceability of the covenants not to sue set forth in Section VIII (Covenants Not
27 to Sue by Plaintiffs).

28 XIII. ACCESS

1 34. If Settling Defendant owns or controls any property where access is
2 needed to implement response activities at the Site, then, commencing on the date
3 of lodging of the Consent Decree, Settling Defendant shall provide the United
4 States, the State, and their representatives, including EPA and its contractors, with
5 access at all reasonable times to such property, for the purpose of conducting any
6 response activity related to the Site, including, but not limited to, the following
7 activities:

- 8 a. Monitoring, investigation, removal, remedial or other activities at the
9 Site;
- 10 b. Verifying any data or information submitted to the United States or the
11 State;
- 12 c. Conducting investigations relating to contamination at or near the Site;
- 13 d. Obtaining samples;
- 14 e. Assessing the need for, planning, or implementing additional response
15 actions at or near the Site;
- 16 f. Inspecting and copying records, operating logs, contracts, or other
17 documents maintained or generated by Settling Defendant or its agents, consistent
18 with Section XIV (Access to Information); and
- 19 g. Assessing Settling Defendant's compliance with this Consent Decree.

20 35. Notwithstanding any provision of this Consent Decree, the United
21 States and the State of California retain all of their access authorities and rights,
22 including enforcement authorities related thereto, under CERCLA, RCRA, and
23 any other applicable statute or regulations.

24 XIV. ACCESS TO INFORMATION

25 36. Settling Defendant shall provide to EPA and DTSC, upon request,
26 copies of all documents and information within its possession or control or that of
27 its contractors or agents relating to activities at the Site or to the implementation of
28 this Consent Decree, including, but not limited to, sampling, analysis, chain of

1 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
2 correspondence, or other documents or information related to the Site.

3 37. Confidential Business Information and Privileged Documents.

4 a. Settling Defendant may assert business confidentiality claims covering
5 part or all of the documents or information submitted to Plaintiffs under this
6 Consent Decree to the extent permitted by and in accordance with Section
7 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
8 Documents or information determined to be confidential by EPA will be accorded
9 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
10 confidentiality accompanies documents or information when they are submitted to
11 EPA and DTSC, or if EPA has notified Settling Defendant that the documents or
12 information are not confidential under the standards of Section 104(e)(7) of
13 CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be given access to such
14 documents or information without further notice to Settling Defendant.

15 b. Settling Defendant may assert that certain documents, records and other
16 information are privileged under the attorney-client privilege or any other
17 privilege recognized by federal law. If Settling Defendant asserts such a privilege
18 in lieu of providing documents, it shall provide the Plaintiffs with the following:
19 (1) the title of the document, record, or information; (2) the date of the document,
20 record, or information; (3) the name, title, affiliation (e.g., company or firm), and
21 address of the author of the document, record, or information; (4) the name and
22 title of each addressee and recipient; (5) a description of the subject of the
23 document, record, or information; and (6) the privilege asserted by Settling
24 Defendant. However, no document, report or other information created or
25 generated pursuant to the requirements of the Consent Decree shall be withheld on
26 the grounds that it is privileged.

27 38. No claim of confidentiality shall be made with respect to any data,
28 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,

1 scientific, chemical, or engineering data, or any other documents or information
2 evidencing conditions at or around the Site.

3 XV. RETENTION OF RECORDS; CERTIFICATION

4 39. Until 10 years after the Settling Defendant's receipt of EPA's
5 notification, transmitted pursuant to Paragraph 43, of the issuance of EPA's
6 Certification of Completion of the Work, Settling Defendant shall preserve and
7 retain all records and documents now in its possession or control, or which come
8 into its possession or control, that relate in any manner to response actions taken at
9 the Site or liability of any person for response actions conducted and to be
10 conducted at the Site, regardless of any corporate retention policy to the contrary.

11 40. At the conclusion of this document retention period, Settling
12 Defendant shall notify the United States and DTSC at least 90 days prior to the
13 destruction of any such records or documents, and, upon request by the United
14 States or DTSC, Settling Defendant shall deliver any such records or documents to
15 EPA or DTSC. Settling Defendant may assert that certain documents, records and
16 other information are privileged under the attorney-client privilege or any other
17 privilege recognized by federal law. If Settling Defendant asserts such a privilege,
18 it shall provide the Plaintiffs with the following: (1) the title of the document,
19 record, or information; (2) the date of the document, record, or information; (3) the
20 name, title, affiliation (e.g., company or firm), and address of the author of the
21 document, record, or information; (4) the name and title of each addressee and
22 recipient; (5) a description of the subject of the document, record, or information;
23 and (6) the privilege asserted by Settling Defendant. However, no document,
24 report or other information created or generated pursuant to the requirements of
25 the Consent Decree shall be withheld on the grounds that it is privileged.

26 41. Settling Defendant hereby certifies that, to the best of its knowledge
27 and belief, after thorough inquiry, it has not altered, mutilated, discarded,
28 destroyed or otherwise disposed of any records, documents or other information

1 relating to its potential liability regarding the Site since notification of potential
2 liability by the United States or DTSC or the filing of suit against it regarding the
3 BPOU Area, and that it has fully complied with any and all EPA requests for
4 information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C.
5 §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

6 42. Leach Holding hereby certifies, to the best of its knowledge and
7 belief, after thorough inquiry, that, other than its ownership of 100 percent of the
8 stock of Leach International Corporation at the time of Settling Defendant's
9 operation of the Facility, Leach Holding did not own or operate the Facility and
10 did not arrange for the disposal or treatment, or arrange with a transporter for
11 transport for disposal or treatment, of hazardous substances, pollutants or
12 contaminants from the Facility. If the United States determines that the
13 certification provided by Leach Holding is not materially accurate and complete,
14 the covenants not to sue and contribution protection afforded Leach Holding by
15 Sections VIII (Covenants not to Sue by Plaintiffs) and XII (Effect of Settlement;
16 Contribution Protection), within the sole discretion of the United States, shall be
17 null and void and the United States and DTSC reserve all rights they may have.

18 XVI. NOTICES AND SUBMISSIONS

19 43. Whenever, under the terms of this Consent Decree, written notice is
20 required to be given or a report or other document is required to be sent by one
21 Party to another, it shall be directed to the individuals at the addresses specified
22 below, unless those individuals or their successors give notice of a change to the
23 other Parties in writing. All notices and submissions shall be considered effective
24 upon receipt, unless otherwise provided. Written notice as specified herein shall
25 constitute complete satisfaction of any written notice requirement of the Consent
26 Decree with respect to the United States, EPA, DTSC, the Settling Defendant, and
27 Leach Holding, respectively.

1 As to the United States:

2 Chief, Environmental Enforcement Section
 3 Environment and Natural Resources Division
 4 U.S. Department of Justice
 5 P.O. Box 7611, Ben Franklin Station
 6 Washington, D.C. 20044
 7 Re: DJ # 90-11-2-354/14

8 and

9 Robert D. Mullaney
 10 Trial Attorney
 11 Environmental Enforcement Section
 12 U.S. Department of Justice
 13 301 Howard Street, Suite 1050
 14 San Francisco, CA 94105

15 As to EPA:

16 Janet Magnuson, ORC-3
 17 Assistant Regional Counsel
 18 United States Environmental Protection Agency
 19 75 Hawthorne Street
 20 San Francisco, CA 94105

21 and

22 Wayne Praskins, SFD-7-3
 23 EPA Project Coordinator
 24 United States Environmental Protection Agency
 25 75 Hawthorne Street
 26 San Francisco, CA 94105

27 As to the Regional Financial Management Officer:

28 Joe Schmidt, PMD-5
 United States Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105

29 As to DTSC:

30 Jacalyn Spizman
 31 DTSC Project Coordinator
 32 Department of Toxic Substances Control
 33 5796 Corporate Avenue
 34 Cypress, CA 90630

35 and

36 Ann Rushton
 37 Office of the Attorney General
 38 300 South Spring Street
 Los Angeles, CA 90013

1 As to Settling Defendant and Leach Holding:

2 Robert Sires
3 President
4 Leach Holding Corporation
5 Suite 114
6 2 Corporate Drive
7 Trumbull, CT 06611

8 XVII. EFFECTIVE DATE

9 44. The effective date of this Consent Decree shall be the date upon
10 which this Consent Decree is entered by the Court, except as otherwise provided
11 herein.

12 XVIII. RETENTION OF JURISDICTION

13 45. This Court retains jurisdiction over this matter for the purpose of
14 interpreting and enforcing the terms of this Consent Decree.

15 XIX. INTEGRATION/APPENDICES

16 46. This Consent Decree and its appendices constitute the final, complete
17 and exclusive agreement and understanding among the Parties with respect to the
18 settlement embodied in this Consent Decree. The Parties acknowledge that there
19 are no representations, agreements, or understandings relating to the settlement
20 other than those expressly contained in this Consent Decree. The following
21 appendices are attached to and incorporated into this Consent Decree:

22 "Appendix A" is the map of the BPOU Area;

23 "Appendix B" is a copy of the ROD; and

24 "Appendix C" is a copy of the ESD.

25 XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

26 47. This Consent Decree shall be lodged with the Court for a period of
27 not less than thirty (30) days for public notice and comment. The United States
28 reserves the right to withdraw or withhold its consent if the comments regarding
the Consent Decree disclose facts or considerations which indicate that the
Consent Decree is inappropriate, improper, or inadequate. Settling Defendant and

1 Leach Holding consent to the entry of this Consent Decree without further notice.

2 48. If for any reason the Court should decline to approve this Consent
3 Decree in the form presented, this agreement is voidable at the sole discretion of
4 any Party and the terms of the agreement may not be used as evidence in any
5 litigation between the Parties.

6 XXI. SIGNATORIES/SERVICE

7 49. The undersigned representative of Settling Defendant and Leach
8 Holding to this Consent Decree, the Assistant Attorney General for the
9 Environment and Natural Resources Division of the United States Department of
10 Justice, or his delegate, and the Deputy Attorney General of the California
11 Department of Justice certifies that he or she is fully authorized to enter into the
12 terms and conditions of this Consent Decree and to execute and legally bind such
13 Party to this document.

14 50. Settling Defendant and Leach Holding hereby agree not to oppose
15 entry of this Consent Decree by this Court or to challenge any provision of this
16 Consent Decree unless the United States has notified Settling Defendant and
17 Leach Holding in writing that it no longer supports entry of the Consent Decree.

18 51. Settling Defendant shall identify, on the attached signature page, the
19 name, address and telephone number of an agent who is authorized to accept
20 service of process by mail on behalf of Settling Defendant and Leach Holding
21 with respect to all matters arising under or relating to this Consent Decree.
22 Settling Defendant hereby agrees to accept service in that manner and to waive the
23 formal service requirements set forth in Rule 4 of the Federal Rules of Civil
24 Procedure and any applicable local rules of this Court, including, but not limited
25 to, service of a summons.

26 XXII. FINAL JUDGMENT

27 52. Upon approval and entry of this Consent Decree by the Court, this
28 Consent Decree shall constitute a final judgment between and among the United

1 States, DTSC, the Settling Defendant, and Leach Holding. The Court finds that
2 there is no just reason for delay and therefore enters this judgment as a final
3 judgment under Fed. R. Civ. P. 54 and 58.

SCANNED

4
5
6
7 Dated: 12/12/05

Christina A. Lytle

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and California Department of Toxic Substances Control v. Leach International Corporation, relating to the BPOU Area.

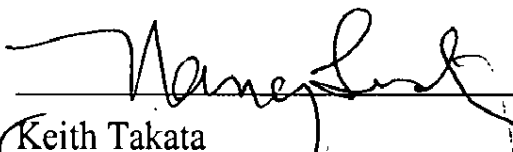
FOR THE UNITED STATES OF AMERICA

Dated: 9/16/05 Kelly A. Johnson
 Kelly A. Johnson
 Acting Assistant Attorney General
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 Washington, D.C. 20530

Dated: 10-25-05 Robert D. Mullaney
 Robert D. Mullaney
 Trial Attorney
 Environmental Enforcement Section
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 301 Howard Street, Suite 1050
 San Francisco, California 94105

Dated:


9/23/05



for Keith Takata
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Dated:

9/23/05



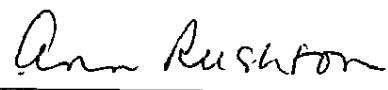
Janet Magnuson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
San Francisco, CA 94105

SCANNED

1 FOR THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC
2 SUBSTANCES CONTROL

3 Dated: 8/26/05 

4 Thomas Cota, Chief
5 Southern California Cleanup Operations
6 Branch, Cypress Office
7 Department of Toxic Substances Control
8 5796 Corporate Avenue
9 Cypress, California 90630

8 Dated: 10-5-05 

10 Ann Rushton
11 Deputy Attorney General
12 California Department of Justice
13 300 South Spring Street
14 Los Angeles, California 90013

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States and State of California Department of Toxic Substances
Control v. Leach International Corporation, relating to the BPOU Area.

3 FOR LEACH INTERNATIONAL CORPORATION and LEACH HOLDING
4 CORPORATION

5
6
7 Dated: 6-21-04



8 Robert Sires
9 President
Leach Holding Corporation
Suite 114
10 2 Corporate Drive
Trumbull, CT 06611 NAME

11
12 Agent Authorized to Accept Service on Behalf of Above-signed Parties:

13 National Registered Agents, Inc.
14 9 East Loockerman Street, Suite 1B
15 Dover, Delaware 19901
16 Tel: (302) 674-4089
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SCANNED



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK

**THE EXHIBIT(S) AND/OR
ATTACHMENT(S) TO THIS DOCUMENT
ARE AVAILABLE IN “THE RECORDS
SECTION” OF THE CLERK’S OFFICE.**